

Frederick, Frank

Appl. No.

Page 8 of 13

Filed: April 13, 2004

Atty. Docket No. 23770-RA

REMARKS/ARGUMENTS**Restriction Election**

Examiner has required restriction between Invention Group I, reading on claims 1-19 and 21, and Invention Group II, reading on claim 20.

Applicant elects to prosecute Invention Group I, reading on claims 1-19 and 21. Applicant has withdrawn claim 20. There is no change to inventorship. Applicant further traverses Examiner's restriction for the reasons below.

Examiner has stated that the product of Invention Group II could be utilized via a materially different method, namely, suspending the product from a tree branch, or wherein the user kneels on the seat. Applicant respectfully points out that suspending Applicant's device from a tree branch would required additional structural components, and, thus, Applicant's device could not be utilized in such a method without such additional components. Further, Applicant respectfully points out that kneeling on a seat is not materially different from sitting on a seat.

Claim Objections

Examiner has objected to claims 2, 12 and 19 as to informalities.

Applicant has amended claims 2, 12 and 19 to correct said informalities in accordance with Examiner's requirements.

Applicant has further amended withdrawn claim 20 to correct an informality.

Frederick, Frank

Appl. No.

Filed: April 13, 2004

Atty. Docket No. 23770-RA

Page 9 of 13

Response to 102(b) Rejections

Examiner has rejected claims 1-3, 5-8, 11, 17 and 18 as being anticipated by Burgard (U.S. Pat. No. 4,773,574). Applicant respectfully traverses.

Regarding claim 1, Examiner has cited the tubular frame 12 of Burgard '574 as comprising a backplane. At best, the tubular frames of Burgard '574 define a periphery carried in a plane, but do not provide a planar surface, and, thus, the tubular frames 12, 14 of Burgard '574 cannot provide back support as Applicant's backframe does. As can be readily observed from FIG. 2 of Burgard '574, the rectangular frame 12 is neither planar nor in the rear of Burgard '574. In fact, frame 12 of Burgard '574 crosses another frame 14 such that a portion of the first frame 12 is in front and a portion is in the rear, thus precluding a planar structure, such as that provided by Applicant's invention, that would function to impede and obstruct such positioning. Namely, a planar structure such as Applicant's would compress the bag of Burgard '574, and, thus, Burgard '574's frame 12 cannot function in the same fashion as Applicant's backplane 20, and is not capable of performing Applicant's provision of support to the user's back. Further frame 12 of Burgard '574 is tubular and is disposed about the periphery and/or sides of the storage bag 40, while Applicant's backplane 20 is disposed at the rear of seat 60 and all of Applicant's storage devices.

Applicant has amended claim 5 to more clearly point out that Applicant's lower storage compartment is carried beneath the seat. Applicant respectfully points out that Examiner has identified reference numeral 80 of Burgard '574 as comprising Applicant's lower storage compartment 90. As can be seen from FIGS. 1, 2, 3, 11 and 12 of Burgard '574, reference numeral 80 of Burgard '574 identifies a rearward storage compartment, not a lower storage compartment carried beneath seat 60, as is disclosed by Applicant. Applicant's lower storage compartment 90 is shown in FIGS. 1 and 2A disposed beneath Applicant's seat 60 (see page 13, lines 5-6), and, thus, clearly distinguishes over Burgard '574.

Frederick, Frank

Appl. No.

Page 10 of 13

Filed: April 13, 2004

Atty. Docket No. 23770-RA

Regarding claim 11, Applicant's movable support kickstand 400 is structurally and functionally different from the "lower end of frame 10" of Burgard '574 cited by Examiner, wherein the "lower end of frame 10" cannot be moved without moving frame 10 itself. Applicant's kickstand 400 is an independently movable single leg, providing kinematically-efficient three-point support. The "lower end of frame 10" of Burgard '574 does not comprise a kickstand, but is, in fact, part of frame 10 itself, and cannot be operated independently from frame 10. Additionally the "lower end of frame 10" does not provide kinematically-efficient support as it comprises a linear support rather than a single point support.

Regarding claim 18, Burgard '574 does not disclose a cylindrically-shaped side storage compartment, and, further, in the Office Action of August 16, 2005, Examiner has not identified a cylindrical side storage compartment in Burgard '574, as there is none.

Examiner has rejected claims 1-3, 5-11, 13 and 17-19 as being anticipated by Jay (U.S. Pat. No. 5,289,958). Applicant respectfully traverses.

Regarding claim 1, the first frame portion (12) and forward leg member (26) of Jay '958 comprise tubular frames, and, thus, are not planar as is the backplane (20) of Applicant's invention. At best, the tubular frames of Jay '958 define a periphery carried in a plane, but do not provide a planar surface, and, thus, the tubular frames of Jay '958 cannot provide support as Applicant's backframe does.

Regarding claim 5, the lower storage compartment of Applicant's invention is carried beneath the seat (as amended), whereas none of the storage compartments of Jay '958 are located beneath the seat.

Frederick, Frank

Appl. No.

Page 11 of 13

Filed: April 13, 2004

Atty. Docket No. 23770-RA

Regarding claim 11, Applicant's kickstand 400 is an independently-movable single leg, providing kinematically-efficient three-point support. The movable leg 26 of Jay '958 does not provide kinematically-efficient support, as it comprises a linear support rather than a single point support.

Regarding claim 13, cover sheet 90 of Jay '958 does not comprise color as does Applicant's cover sheet. The color of Applicant's cover sheet is selected to provide bright visual warning of a hunter's presence, or alternately, camouflage to conceal a hunter's presence.

Regarding claim 18, none of the storage compartments of Jay '958 are cylindrical.

Examiner has rejected claim 4 as being unpatentable over Jay '958 in view of Smith, III (U.S. Pat. No. 6,196,437). Applicant respectfully traverses.

Smith III '437 teaches a closing means (7) selected from the group consisting of velcro, zippers or string-type tie-downs. As is evident from Smith III '437, top flap (9) must be secured by tying-down to utility pocket (6). Applicant respectfully asserts that a drawstring, as such term is known in the art, comprises closure of a single peripheral edge by pulling the string tight. It is structurally different in that it does not require two separate components to be closed and functionally different in that it tightens the periphery, rather than tying-down.

Examiner has rejected claims 12, 14-16 and 21 as being unpatentable over Jay '958 as a design choice within the skill of those in the art. Applicant respectfully traverses.

Examiner has admitted that the colors of the covering sheet are not specified within Jay '958. Furthermore, there is no indication of color in Jay '958, and, thus, there is no motivation to utilize color within Jay '958. Examiner's assertion that any color would be suited is erroneous. Applicant has specified with particularity that

Frederick, Frank

Appl. No.

Filed: April 13, 2004

Atty. Docket No. 23770-RA

Page 12 of 13

camouflage coloring and visually bright colors are required by Applicant's invention to alternately conceal the user, or brightly identify the user, (see page 15, line 18 through page 16, line 10). See MPEP §706.02(j) citing *In re Vaeck*, 947 F.2d 488 (Fed.Cir. 1991) ("The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not be based on Applicant's disclosure."); *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985) ("To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.")

CONCLUSION

No new matter has been added.

Since none of the prior art discloses a backplane, Applicant respectfully asserts that independent claims 1 and 21 distinguish Applicant's invention over the prior art. Thus, Examiner's rejection of all claims depending from claims 1 and 21 is moot, and claims 1-19 and 21 are now in condition for allowance. If Examiner disagrees with Applicant's position and would like to receive further clarifying explanations of the significance of Applicant's invention, it is respectfully requested that Applicant be granted a telephone interview with Examiner.

Otherwise, should the Examiner have any questions regarding this submission, he is invited to contact the undersigned counsel at the telephone number below.

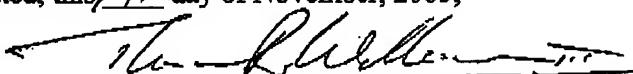
{Signature follows on next page}

Frederick, Frank
Appl. No.
Page 13 of 13

Filed: April 13, 2004

Atty. Docket No. 23770-RA

Respectfully submitted, this 14th day of November, 2005,



Thomas R. Williamson III, Esq.
Reg. No. 47,180
Email: twilliamson@mkiplaw.com

MYERS & KAPLAN,
INTELLECTUAL PROPERTY LAW, L.L.C.
1899 Powers Ferry Road
Suite 310
Atlanta, GA 30339
Phone: (770) 541-7444
Fax: (770) 541-7448